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R Schwartz Art Unit 121

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- Sprung, Felfe, Horn,
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600 Third Ave.
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GROUP 120

 THIS IS A COMMUNICATION FROM THE EXAMINER
IN CHARGE OF YOUR APPLICATION.

 COMMISSIONER OF
PATENTS AND TRADEMARKS

- ☒ This application has been examined.
☒ Responsive to communication filed on 6-11-79.
☒ This action is made final.

 A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE THREE MONTH(S)
 DAYS FROM THE DATE OF THIS LETTER.

 FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED.
35 U.S.C. 133

PART I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited, Form PTO-892. 2. ☐ Notice of Informal Patent Drawing, PTO-948.
 3. ☐ Notice of Informal Patent Application, 4. ☐
 Form PTO-152

PART II SUMMARY OF ACTION

1. ☒ Claims 5-16, 18, 24-49 are pending in the application.
 Of the above, claims 33, 39, 44, 46 are withdrawn from consideration.
 2. ☒ Claims 1-4, 17, 19-23 have been cancelled.
 3. ☐ Claims _____ are allowed.
 4. ☒ Claims 5-9, 18, 24-32, 34-38, 40-43, 45, 47-49 are rejected.
 5. ☒ Claims 10-16 are objected to.
 6. ☐ Claims _____ are subject to restriction or election requirement.
 7. ☐ The formal drawings filed on _____ are acceptable.
 8. ☐ The drawing correction request filed on _____ has been ☐ approved.
 ☐ disapproved.
 9. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has
 ☐ been received. ☐ been filed in parent application;
 ☐ not been received. ☐ serial no. _____ filed on _____
 10. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the
 merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
 11. ☒ Other : Applicants are given 45 days to make the attached
 claim for interference purposes.

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The restriction requirement of the previous Office action is repeated and hereby made FINAL. The requirement for election of a single species is withdrawn. Applicants' arguments have been considered, but are deemed unpersuasive. The composition claims (pharmaceutical and animal feedstuff) involve independent and patentably distinct concepts. The pharmaceutical utility involves treating pre-existing disorders, whereas the feed stuff utility does not. As such, the respective composition claims are unrelated and will support separate patents.

Accordingly, claims 33,39,44 and 46 stand withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being directed to a non-elected invention, the requirement having been traversed in paper no. 5. A complete response must include cancellation of the non-elected claims, or other appropriate action, 37 CFR 1.144.

Claim 45 is again rejected as obvious, 35 USC 103, over Saeki. Applicants' arguments have been considered, but are deemed unpersuasive. While Saeki discloses that acid treatment of compound VIII produces a pyridine derivative, the structure of said derivative is not definitely XIII (note the phrase "or the likes (sic)" at page 963, line 33).

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The UV spectral data simply show that the compound is a pyridine derivative substituted by hydroxyl. Note that applicants process does not preclude pyridine formation. Indeed, the hydrogenation conditions employed are those typically employed for reducing pyridines to piperidine. Hence, hydrolysis of instant compound XXI to the pyridine analog of compound I, followed by reduction to the piperidine would be obvious to one of ordinary skill.

Claims 5-9, 18, 24-32,34-38,40-43,45 and 47-49 are rejected as failing to comply with the requirements of 35 USC 112, paragraphs 1 and 2. Claim 47, in addition, is rejected under 35 USC 132 as being drawn to new matter. Note that the term "phenyl-acyl carbonyl" at page 3, line 1 of applicants' amendment has no supporting disclosure. The reference to "heterocyclic carboxylic acid containing from 1 to 3 hetero-atoms each of which is N, O or S" is vague and indefinite and lacks enablement for all it embraces. Support is present only for identical multiple hetero atoms in a 5 or 6-membered ring system. The phenyl substituents ethyl and methoxy are duplicated in claims 47-48. Different substituents are listed for "phenyl" and for "naphthyl and phenyl" in claims 47 and 49.

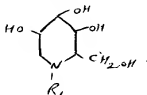
The meaning thereof is unclear. The square brackets in claims 47-49 should be replaced by parentheses to avoid confusion with amendatory matter. The number "6" is omitted in claim 47, line 16. The composition and method claims should include an intended use and/or an amount of active ingredient. The term "effective amount" is vague and indefinite for failing to state intended function. Note that the amendments to claims 24, 27, and 34-36 beginning at page 6, line 6 of applicants' amendment have not been entered. Said claims have been already amended to change "1" to "47", and as such are not "once amended". The amendment to claim 5 has not been entered, since the number "1" does not appear therein.

Claims 10-16 are objected to for dependence on a rejected claim.

This action is made FINAL.

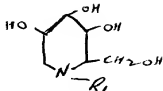
The following claims, found allowable, are suggested for the purpose of interference:

1. A compound of the formula:



wherein R₁ is C₂-C₁₈ alkenyl.

2. A compound of the formula:



wherein R_1 is C_1-C_{30} alkyl substituted by phenyl, said phenyl being unsubstituted or substituted by hydroxyl, amino, C_1-C_4 alkylamino, di- C_1-C_4 alkylamino, C_1-C_4 alkoxy, cyano, carboxy, C_1-C_4 alkoxy-carbonyl, C_1-C_6 alkyl or halogen.

APPLICANTS SHOULD MAKE THE CLAIMS BY 45 DAYS. FAILURE TO DO SO WILL BE CONSIDERED A DISCLAIMER OF THE SUBJECT MATTER INVOLVED UNDER THE PROVISIONS OF 37 CFR 1.203.

Applicants are advised that two time periods are now running against the instant application.

Henry R. Jones
Supervisory Patent Examiner
Art Unit 121

RASchwartz:maw

A/C 703

557-2517

08/08/79